

Record & Return to:  
Henry Kent-Smith, Esq.  
Fox Rothschild, LLP  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648

Prepared by: Henry Kent-Smith, Esq.

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") made this 19 day of March, 2018, by and between:

**TOWNSHIP OF SOUTH BRUNSWICK**, a municipal corporation of the State of New Jersey, County of Middlesex, having an address at 540 Ridge Road, Monmouth Junction, New Jersey 08852 (hereinafter the "**Township**");

**TOWNSHIP OF SOUTH BRUNSWICK PLANNING BOARD**, a land use board constituted under the authority of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., having an address at 540 Ridge Road, Monmouth Junction, New Jersey 08852 (hereinafter the "**Planning Board**");

And

**PRINCETON ORCHARDS ASSOCIATES, LLC**, a New Jersey limited liability company, c/o The Westover Companies, 550 American Avenue, Suite 1, King of Prussia, PA 19406 (hereinafter "**POA**"), on behalf of itself and as successor in interest to **RICHARDSON FRESH PONDS, LLC**;

Collectively, the Township, Planning Board and POA shall be referred to as the "**Parties.**"

**WHEREAS**, POA is the owner of the real property located on Route 522, Ridge Road and Griggs Drive and designated as Block 31.00, Lot 30.012 and Block 31.00, Lot 35.09 on the tax map of the Township of South Brunswick (the "Property"), consisting of approximately 49 acres, with a 24 acre portion of the Property developed for 120 two-bedroom apartments, known as "Princeton Orchards", and the remaining 25 acres fronting on Route 522 being currently vacant; and

**WHEREAS**, on July 1, 2015, the Township filed a declaratory judgment action seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs entitled In the Matter of the Application of the Township of South Brunswick, County of Middlesex, Docket No. MID-3878-15, transferred to Mercer County under Docket No. MER-L-0810-17 by order of April 20, 2017, and transferred back to Middlesex County by order of July 26, 2017 subsequently given Docket No. MID-L-4436-17 (the "DJ Action"); and

**WHEREAS**, on or about July 16, 2015, Richardson Fresh Ponds and POA filed a Motion to Intervene in the DJ Action ("POA Intervention"); and

**WHEREAS**, on July 31, 2015, the Court granted, among other things, the POA

Intervention, as well as temporary immunity to the Township from builder's remedy actions in the DJ Action; and

**WHEREAS**, on or about August 20, 2015, Richardson Fresh Ponds and POA filed their answer in the DJ Action; and

**WHEREAS**, the Court having revoked the Township's immunity permitting the filing of various builder's remedy actions under separate docket numbers, which were consolidated with the DJ Action, including a builder's remedy complaint filed on May 3, 2016 by Richardson Fresh Ponds and POA entitled, Richardson Fresh Ponds LLC v. Township of South Brunswick, et al., Docket No. MID-L-2638-16 (the "Builder's Remedy Action"); and

**WHEREAS**, the Court having rendered Opinions and Orders dated July 21, 2016, October 6, 2016, and October 21, 2016, following multiple dates of trial and briefing concerning the Township's regional fair share obligations for the period from 1999 through 2025 and notwithstanding the Township's and Planning Board's potential appeal of the above referenced Opinions and Orders, the Township and Planning Board have agreed to proceed with this settlement, and

**WHEREAS**, the Township had previously acquired title to certain property adjoining the existing Princeton Orchard apartments known as 368 Ridge Road, Dayton, NJ., and designated as Block 31 Lots 35.712 and 35.811, being approximately 6.04 acres in area, and commonly referred to as the "Stover Tract"; and

**WHEREAS**, the Township and POA have reached an agreement to convey the Stover Tract to POA as an adjoining property owner in consideration of POA's agreement to modify its proposed development to redistribute a portion of the proposed inclusionary housing development on to the Stover Tract; and

**WHEREAS**, in light of the agreement by the Township to convey the Stover Tract to POA, the Parties have reached an agreement whereby POA will develop its Property, inclusive of the Stover Tract (together referred to as the "Development Property"), for a subdivided commercial lot consisting of approximately (9) contiguous acres fronting on Route 522, inclusive of the existing Maul Electric property (the "**Commercial Lot**") and with an inclusionary project consisting of a total of 120 existing and 184 new apartments, with a 25% affordable housing set aside allocated to the 184 new market rate apartments, resulting in creation of 46 affordable family rental apartments; and

**WHEREAS**, the 46 affordable units will be set-aside for ten (10) very low income households, fourteen (14) low income households and twenty-two (22) moderate income households (the "**Inclusionary Development**"); and

**WHEREAS**, POA is amenable to fully and finally resolving the POA Intervention premised upon the Township's agreement to convey the Stover Tract to POA and securing the right to construct the Inclusionary Development contemplated herein on the Development Property pursuant to the standards set forth in the attached Ordinance; and

**WHEREAS**, the Planning Board is a party to this Settlement Agreement and will abide by the terms of this Agreement as set forth below for the purpose of facilitating a resolution of POA's objection to the Township's Affordable Housing Plan and the ultimate production of the affordable housing that is part of the Inclusionary Development as set forth in Section 10.8; and

**WHEREAS**, if required by the Court, the Parties will seek the Court's approval of this Settlement Agreement in connection with the DJ Action, and the Parties intend to be bound by this Agreement, provided this Agreement is approved by the Court; and

**WHEREAS**, to ensure that the Inclusionary Development contemplated by this Agreement generates affordable housing credits to be applied to the Township's Gap (1999-2015) and Round 3 (2015-2025) affordable housing obligations, the affordable units within the Inclusionary Development shall be developed in accordance with the COAH Prior Round regulations, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and all other applicable law, and said Inclusionary Development shall be deed restricted for a period of at least 30 years from the initial occupancy of the affordable units; and

**WHEREAS**, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court's approval of this Agreement (if required by the Court);

**NOW, THEREFORE**, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, each binding itself, its successors and assigns, do hereby covenant and agree, each with the other, as follows:

#### **ARTICLE I – "PRD ZONE"**

**1.1 Purpose** The purpose of this Agreement is to settle the POA Intervention and to create a realistic opportunity for the construction of the Inclusionary Development, and to generate affordable housing credits for the Township to apply to its Gap (1999-2015) and Prospective Need (2015-2025) affordable housing obligations. The Inclusionary Development shall be substantially consistent with the concept plans, architectural elevations and floor plans attached hereto and made a part hereof as **Exhibit A** and zoning standards attached hereto and made a part hereof as **Exhibit B**, which have generally been reviewed and approved by the Township and the Township's professionals. The Inclusionary Development and the Commercial Lot shall be governed by "a PRD Zone" (the "PRD Zone") that will be adopted as part of Township Zoning Ordinances in accord with the timeframes and standards set forth herein.

**1.2 Standards** The PRD Zone shall incorporate the following requirements:

**1.2.1 Density.** The mixed-use development of the Development Property shall be developed with a residential unit yield not to exceed 304 total residential units (comprised of 120 existing residential units and 184 new residential units),

inclusive of the affordable housing component that is described in greater detail in Section 3.1 herein.

- 1.2.2 Setbacks.** The mixed-use development of the Development Property shall comply with the building setbacks set forth in the bulk chart attached as **Exhibit B**, which standards shall be adopted as part of the “PRD VI” Zone that will be part of Township Zoning Ordinances.
- 1.2.3 Commercial Lot.** The mixed-use development of the Development Property shall include an approximately nine (9) contiguous acre parcel both fronting on Route 522 and Griggs Drive, as shown on the attached **Exhibit A**. The Commercial Lot shall be zoned in accordance with the PRD Zone standards. The commercial development will pay any Non Residential Development Fee that may be in force at the time of site plan approval pursuant to N.J.S.A. 40:55D-8.1 et seq.
- 1.2.4 Amenities.** POA shall allow the affordable housing residents to use the various amenities in the Inclusionary Development designed to support the apartment uses, including, without limitation, the existing clubhouse, pool and tot lot, on the same terms and conditions as the market rate apartment residents.
- 1.2.5 RSIS.** The Parties agree that the residential portion of the Inclusionary Development shall be governed by the Residential Site Improvement Standards (“RSIS”) as to all matters covered by the RSIS.
- 1.2.6 Buffer and Linear Park.** Buffering shall be provided along Griggs Drive and along the common property line with the Summerfield development, including the construction of a Linear Park, in accord with the standards of the PRD VI Zone.
- 1.2.7 Pedestrian Pathway to Stop & Shop.** The Pedestrian pathway/sidewalk leading to the rear of the existing Super Stop & Shop shall include a new pathway/sidewalk, or an appropriate crosswalk leading to an existing pathway/sidewalk, on the Super Stop & Shop property sufficient to provide safe access for pedestrians to the Super Stop & Shop.
- 1.2.8 Maul Electric Driveway access.** If Maul Electric leaves its existing facility or otherwise abandons operations on the tract, the Maul Electric access driveway on Griggs Drive shall be closed and no further connection between the PRD VI zoned property shall be allowed onto Griggs Drive.
- 1.2.9 Existing Impervious Cover.** All existing impervious cover and associated storm water management facilities serving the existing Princeton Orchards Apartments shall be allowed to remain, and no additional storm water requirements shall be required for the existing improvements. All impervious coverage associated with any new development or improvements shall comply with current RSIS and NJDEP storm water regulations.
- 1.2.10 Cost Generation.** The Parties agree that the standards and requirements set forth

in Section 4.6 satisfy the requirement to limit cost generation.

**1.2.11 Site Remediation.** The Parties acknowledge that both the Stover Tract and the undeveloped portions of the Tract require soil remediation to address historic pesticide contamination. POA shall be solely responsible for all site remediation, and shall hold harmless the Township from any and all claims associated with the condition of the Stover Tract.

**1.2.12 Vacating and Relocation of Griggs Drive Cul de Sac.** The Parties agree that the proposed development plan contemplated by this Settlement Agreement requires that a portion of the existing Griggs Drive right of way, including the existing cul de sac, are to be vacated by the Township. The vacating of the Griggs Drive ROW shall be detailed in a separate Exhibit that shall include a metes and bounds description of the area to be vacated. The area of the Griggs Drive Right of Way to be vacated shall be reviewed and approved by the Planning Board as part of the site plan application. The Ordinance vacating the right of way shall be adopted within sixty (60) days following the site plan approval. Notwithstanding vacation of the Right of Way, any existing utility easements shall be specifically reserved. The work required to actually relocate the existing cul de sac shall be done by POA, at POA's expense, and shall be subject to inspection and approval by the Township.

## **ARTICLE II - BASIC TERMS AND CONDITIONS**

**2.1 Fairness Hearing.** This Agreement may be subject to Court approval at a Fairness Hearing to be scheduled at a date determined by the Court. If such Fairness Hearing is required by the Court, the Parties will work together to ensure that the Court approves this Agreement.

**2.2 Legal Challenges.** In the event of any legal challenges to the Court's approval of this Agreement pursuant to the East West Venture v. Ft Lee fairness procedure, or any appeal of any Approvals, the Parties shall diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this Agreement or the Inclusionary Development, the Parties shall negotiate in good faith with the intent to draft a mutually-acceptable amended Agreement, provided that no such modification requires an increase or decrease in density from that agreed upon and reflected in the within Agreement. Each Party shall be responsible for their own legal fees and costs associated with any legal challenge.

**2.3 Continuation of DJ Action.** This Agreement does not purport to resolve all of the issues before the Court raised in the DJ Action. The Township and Planning Board may continue to prosecute the DJ Action, however, such continued prosecution shall not affect this Agreement and the Inclusionary Development that is authorized herein.

## **ARTICLE III – POA OBLIGATIONS**

**3.1 Affordable Housing Set-Aside.** POA shall have an obligation to deed-restrict forty-six (46) of the residential units in the Inclusionary Development as very low, low and moderate income affordable family rental units. Any such affordable rental units shall comply

with UHAC, applicable COAH affordable housing regulations (N.J.A.C. 5:93-1), any applicable order of the Court, and other applicable laws, including the 13% very low income requirement (a minimum of 13% very low income units, very low income being defined as 30% or less of the regional median income) embodied in the Fair Housing Act at N.J.S.A. 52:27D-329.1, et seq., in lieu of the UHAC requirement as to very low income of 10% at 35% or less of the regional median income.

- 3.1.1** The affordable units shall remain affordable rental units for a period of at least thirty (30) years from the date of their initial occupancy (“Deed-Restriction Period”) consistent with UHAC regulations (N.J.A.C. 5:80-26.11) or the then applicable regulation, so that the Township may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to, POA’s obligation to comply with:
- (1) bedroom distribution requirements (10 three bedroom units (2 very low, 3 low and 5 moderate), 27 two bedroom units (6 very low, 8 low and 13 moderate) and 9 one bedroom units (2 very low, 3 low and 4 moderate),
  - (2) income split requirements (10 very low income units, 14 low income units and 22 moderate income units),
  - (3) pricing requirements pursuant to Court approval of the 2017 income limits,
  - (4) affirmative marketing requirements,
  - (5) candidate qualification and screening requirements,
  - (6) integrating the affordable units amongst the market rate units, and
  - (7) deed restriction and monitoring requirements.
- 3.1.2** Inspection and certification of existing 2 bedroom affordable family rental units shall occur when the unit has been vacated by the existing tenant. No existing tenant shall be displaced due to the imposition of the Deed Restriction. All existing two-bedroom units shall be inspected and certified to be in sound condition by an inspection performed by a licensed building inspector prior to acceptance of the existing units as affordable units. All existing two bedroom affordable units shall be subject to the administration of the affordable units pursuant to 3.1.1 above.
- 3.1.3** POA shall contract with the Township’s affordable housing administrative agent (“Administrative Agent”) for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting and the long-term administration of the affordable units pursuant to 3.1.1 above in accordance with UHAC and other applicable laws for the Deed-Restriction Period. POA shall work with the Township and the Township’s Administrative Agent regarding any affordable housing monitoring requirements imposed by COAH or the Court.
- 3.1.4** The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the

DJ Action, and that the credits will be applied against the Township's Gap (1999-2015) and Prospective Need (2015-2025) obligations.

- 3.1.5 Upon written notice, POA shall provide detailed information requested by the Township, or the Township's Administrative Agent, within 30 days concerning POA's compliance with UHAC and other applicable laws.
- 3.1.6 The two (2) bedroom affordable family rental units shall be reasonably dispersed within the existing Princeton Orchards buildings. The one (1) and three (3) bedroom affordable family rental units shall be reasonably dispersed within the proposed new housing. The two (2) bedroom units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector, and brought up to code as necessary, with the rehabilitation costs to be borne by POA. The two bedroom affordable controls shall be phased in as existing tenants terminate and vacate existing units. The Deed Restriction Period for each two bedroom unit shall commence on the date that an income qualified tenant commences occupancy of the Deed-Restricted Unit.
- 3.1.7 Each affordable unit shall contain at least one bedroom with an area of at least 150 square feet and no bedroom shall have an area of less than 100 square feet. The minimum area of each affordable unit shall be as follows:
  - a. One (1) bedroom – 650 square feet.
  - b. Two (2) bedroom – 875 square feet.
  - c. Three (3) bedroom – 1,150 square feet.

**3.2 Obligation Not To Oppose Township's Application for Approval of its Affordable Housing Plan.** As it pertains to the Township's Application for Approval of its Affordable Housing Plan, POA shall not directly or indirectly oppose or undertake any further action to interfere with the Court's adjudication of the Township's affordable housing obligations and compliance standards. POA shall also not directly or indirectly oppose or undertake any further action to interfere with the Court's approval and/or implementation of the Affordable Housing Plan, as it may be amended in any form, unless the Affordable Housing Plan deprives POA of any rights created hereunder, or unless any other defendants or interested parties undertake any action to obstruct or impede POA from securing such approvals as it needs to develop the Inclusionary Development on the Property.

**3.3 Obligation to Withdraw Objection To The Township's Affordable Housing Plan and Dismiss Complaint.** Upon approval of this Settlement Agreement by all Parties, and the Township adopting the Ordinance contemplated herein, POA agrees that it will withdraw its current objection to the Township's Affordable Housing Plan, dismiss with prejudice its Builder's Remedy Action entitled Richardson Fresh Ponds LLC v. Township of South Brunswick, et al., Docket No. MID-L-2638-16, filing a Stipulation of Dismissal with Prejudice substantially similar to that shown in **Exhibit C**, and that it will not object further to the Township's Affordable Housing Plan, as may be amended. However, nothing herein shall preclude either party from seeking

enforcement of this Settlement Agreement by Motion to Enforce Litigants Rights, and in the event such a Motion is filed, the prevailing party shall be entitled to legal fees.

#### **ARTICLE IV - OBLIGATIONS OF THE TOWNSHIP**

**4.1 Obligation To Adopt Zoning Ordinance.** The Township shall adopt the PRD Zoning Ordinance (the “**PRD Ordinance**,”) in substantially similar form as is attached hereto as “Exhibit B” within sixty (60) days following the Effective Date of this Settlement Agreement, subject to any Court approval that may be required. The PRD Ordinance shall be reasonably satisfactory to both the Township and POA (or its successor). In connection with the above actions, the Township shall comply with all applicable procedural requirements set forth in the Municipal Land Use Law and the case law interpreting same, including, but not limited to, legal notice requirements. All of the time periods set forth in this Section 4.1 may be subject to extension of time, which shall be reasonably agreed upon by the Parties, if at no fault of either Party the required actions cannot be completed within the time periods established.

**4.2 Obligation To Preserve The Zoning Ordinance.** The PRD Ordinance shall not be amended or rescinded for a period of ten (10) years, except upon the application of POA and consented to by the Township, or by Order of the Court.

**4.3 Representation regarding Sufficiency of Water and Sewer.** The Township agrees to reasonably assist with POA’s investigation and inquiry into the sufficiency of potable water and sewer capacity to service the proposed Inclusionary Development. The Parties acknowledge that the Township is currently conducting an engineering study to determine if sufficient sewer capacity exists. Any on-site water, sewer, or any other utility infrastructure or improvements required for the development of the proposed Inclusionary Development shall be at the sole cost and expense of POA. In addition, POA may be required to provide a pro rata contribution in accordance with N.J.S.A. 40:55D-42, as applicable, for any such improvements that are located off site or off tract.

**4.4 Obligation To Cooperate.** The Township acknowledges that in order for POA to construct its Inclusionary Development, POA will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities; such as, by way of example only, the Township, the Planning Board, the County of Middlesex, the Middlesex County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, Freehold Soil Conservation District and the like, including the Township’s ordinance requirements as to site plan and subdivision approval (the “**Required Approvals**”). The Township agrees to use all reasonable efforts to assist POA in its undertakings to obtain the Required Approvals.

**4.5 Obligation to Refrain From Imposing Cost-Generative Requirements.** The Township and Planning Board recognize that the Required Approvals and this Agreement all contemplate the development of an “Inclusionary Development” within the meaning of the Mount Laurel doctrine. Therefore, the Township and Planning Board will not impose development standards and/or requirements that have not been agreed to by the parties, and would otherwise be considered to be “cost generative.” In particular, the Parties agree that, as the inclusionary development described herein is providing a 25% affordable housing setaside, the following cost



controls shall apply to the Inclusionary Development:

- a. the Stover Tract shall be exempt from complying with the requirements of the Tree Replacement Ordinance, Section 62-121 to 133,
- b. no separate designated lighting for walkways and paths in buffer areas, other than ambient lighting from buildings and parking areas, those shown on the approved plans and such lighting as may be required to ensure pedestrian safety, shall be required,
- c. The Township and Planning Board agree that the concept plans, elevations and floor plans set forth in Exhibit A comply with the intent of Section 62-206 and there shall be no further requirements associated with Section 62-206 standards.

In addition, the Parties agree to the following in light of controlling cost generation aspects of this Inclusionary Development:

- d. all Township professional review escrow fees for review of the Inclusionary Development application from the date of application to the date of approval shall be capped at an amount not to exceed \$45,000.00.
- e. all off tract improvements related to traffic impacts associated with the Inclusionary Development shall be capped at \$100,000.00.
- f. all monetary obligations associated with the Tree Replacement Ordinance, Section 62-121 to 133, shall be capped at \$41,428.00 pursuant to the calculations shown in **Exhibit D**. During the course of design and/or construction, POA may elect to reduce this contribution by planting additional trees within the existing and proposed development. In such event, the replacement value of \$41,428.00 will be reduced based upon the number of additional trees planted in excess of 1,295.
- g. the Planning Board will allow a comprehensive storm water management system for the entire Inclusionary Development, regardless of internal lot configuration. Stormwater basin design standards shall adhere to RSIS and NJDEP requirements. The design standards in Section 62-2571 shall not apply if said standards are in addition to or exceed NJDEP and RSIS design standards.

**4.6** The Township will petition the Court to establish the Household Affordability Income Limits, with annual income adjustments as permitted by the Court.

## **ARTICLE V – OBLIGATIONS OF THE PLANNING BOARD**

**5.1 Obligation to Process POA's Development Applications with Reasonable Diligence.** The Planning Board shall expedite the processing of POA's development applications following POA's filing of a complete application(s) and within the time limits imposed by the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., ("MLUL"). In the event of any appeal of the Required Approvals, or Court approval of this Agreement, the Board shall process and take action on any development application by POA for the Property which decision may be conditioned upon the outcome of any pending appeal.

**5.2 Obligation to Refrain From Imposing Cost-Generative Requirements.** The Planning Board recognizes that the Required Approvals and this Agreement all contemplate the development of an "Inclusionary Development" within the meaning of the Mount Laurel doctrine.

The Planning Board agrees to adhere to the specific requirements of Section 4.6 above related to specific cost generation requirements associated with the Inclusionary Development as this inclusionary development is significantly exceeding the typical affordable housing rental setaside of 15% as generally approved in court and COAH matters by providing a 25% affordable family rental setaside. Except as to the standards and requirements set forth in this Agreement, nothing shall prevent POA from applying for a waiver or bulk variance from any standard imposed by the Township's Land Use and Development Ordinance, as applicable, and the standards set forth in the MLUL, as applicable. Notwithstanding the above, the Township Council and the Planning Board are under no obligation to grant or approve any request for a bulk variance, waiver or de minimus exception.

## **ARTICLE VI – MUTUAL OBLIGATIONS**

**6.1 Escrow Agreement.** Within thirty (30) days of the Effective Date (as this term is defined herein), POA shall deposit all necessary escrow monies with the Township to be utilized to tender payment of reasonable fees for professional services, including legal, engineering, and planning services being provided in conjunction with the Required Approvals. Upon receipt of all Approvals in final and unappealable form, POA shall deposit all necessary escrow monies with the Township to be utilized to tender payment of reasonable fees for professional services, including legal, engineering, building subcode and planning services for construction inspection of the Inclusionary Development.

**6.2 Obligation To Comply with State Regulations.** The Parties shall comply with any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Inclusionary Development or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

**6.3 Mutual Good Faith, Cooperation and Assistance.** The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement by the Court (if required), the Required Approvals, the development of the Property consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

**6.4 Failure to Adopt PRD Ordinance.** If the Township fails to adopt the PRD Ordinance within the time frames set forth in Section 4.1, then, at the option of POA, in its sole discretion and by prior written notice to the Township in accordance with Article IX of this Agreement, the Parties shall be restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the Parties:

**6.4.1** In the event that POA decides that the Parties shall be restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the Parties, no Party shall be entitled to use this Agreement, or negotiations in conjunction therewith.

**6.5 Defense of Agreement.** Each party exclusively shall be responsible for all costs that they may incur in obtaining Court approval of this Agreement (if required) and any appeal therefrom, or from obtaining the Required Approvals or the approval of the Affordable Housing Plan or any part thereof except as is otherwise provided in this Agreement. The Parties shall diligently defend any such challenge.

## **ARTICLE VII - AFFORDABLE HOUSING CREDITS**

**7.1 Demonstration of Creditworthiness of Units.** Upon written notice, POA agrees to supply the Township and the Township's Administrative Agent, within 30 days, all documents within its possession that may be reasonably necessary to demonstrate to the Court or any other reviewing agency, entity or body, the creditworthiness of the affordable units.

## **ARTICLE VIII - COOPERATION AND COMPLIANCE**

**8.1 Implementation And Enforcement Of Agreement.** The Parties agree to cooperate with each other, provide all reasonable and necessary documentation, and take all actions reasonably necessary to satisfy the terms and conditions hereof and assure compliance with the terms of this Agreement, subject to prior written agreement between the Parties on payment by the requesting party of the requested party's direct costs and expenses in connection with such assistance. The Township's obligation to cooperate shall be further conditioned upon POA paying and maintaining current real estate taxes and all other municipal assessments, subject to any exemption for the Inclusionary Development.

## **ARTICLE IX - NOTICES**

**9.1 Notices.** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein "Notice[s]") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' written notice as provided herein:

**TO POA:**

**Princeton Orchards Assoc., LLC**  
**c/o Guntram J. Weissenberger**  
The Westover Companies  
550 American Avenue, Suite 1  
King of Prussia, PA 19406

**WITH COPIES TO:**

**Fox Rothschild, LLP**  
**Attention: Henry L. Kent-Smith, Esq.**  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648

Fax: 609-482-8901  
Email: hkent-smith@foxrothschild.com

**TO THE TOWNSHIP OF SOUTH BRUNSWICK:**

**Clerk of Township of South Brunswick**  
540 Ridge Road  
P.O. Box 190  
Monmouth Junction, NJ 08852

**WITH COPIES TO:** Law Department, Township of South Brunswick  
540 Ridge Road  
P.O. Box 190  
Monmouth Junction, NJ 08852  
Attn: Donald J. Sears, Director of Law  
PH: (732) 329-4000 ext. 7311  
Email: dsears@sbtanj.net

**TO THE SOUTH BRUNSWICK PLANNING BOARD:**

South Brunswick Planning Board  
Township of South Brunswick  
540 Ridge Road  
Monmouth Junction, NJ 08852  
Attn: Director of Planning  
PH: (732) 329-4000 X7239

**WITH COPIES TO:** Thomas F. Collins, Jr., Esq.  
Thomas J. Molica, Jr., Esq.  
Vogel, Chait, Collins & Schneider, P.C.  
25 Lindsley Drive, Suite 200  
Morristown, NJ 07960-4454  
PH: (908) 538-3800  
Email: tcollins@vccslaw.com  
tmolica@vccslaw.com

In the event any of the individuals identified above has a successor, the individual identified shall, in writing, name the successor and notify all others identified of their successor.

**ARTICLE X - MISCELLANEOUS**

**10.1 Severability.** Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provisions of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

**10.2 Successors Bound.** The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have a fee title interest in the Property which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors and assigns, as herein set forth.

**10.3 Recording of Agreement.** This Agreement shall be recorded in the office of the Middlesex County Clerk.

**10.4 No Modification.** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

**10.5 Effect of Counterparts.** This Agreement may be executed simultaneously in one (1) or more facsimile or e-mail counterparts, each of which shall be deemed an original. Any facsimile or e-mail counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth herein.

**10.6 Voluntary Agreement.** The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

**10.7 Interpretation.** Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties, and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the person(s) executing it.

**10.8 Necessity of Required Approvals.** The Parties recognize that the site plans and subdivision required to implement the Inclusionary Development provided in this Agreement, and such other actions as may be required of the Planning Board or Township under this Agreement, cannot be approved except on the basis of the independent reasonable judgment by the Planning Board and the Township Council, as appropriate, and in accordance with the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law. Similarly, nothing herein is intended to preclude POA from appealing any denials of or conditions imposed by the Planning Board in accordance with the MLUL or taking any other action permitted by law, subject to POA's compliance with the terms of this Agreement.

**10.9 Schedules.** Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement only upon the prior written approval of all Parties.

**10.10 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

**10.11 Conflict Of Interest.** No member, official or employee of the Township or the Planning Board shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

**10.12 Effective Date.** Anything herein contained to the contrary notwithstanding, the effective date ("Effective Date") of this Agreement shall be the date upon which the last of the Parties to execute this Agreement has executed and delivered this Agreement.

**10.13 Waiver.** The Parties agree that this Agreement is enforceable. Each of the Parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

**10.14 Captions.** The captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement.

**10.15 Default.** In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by all of the other Parties for whose benefit such obligation is intended, or by the Court, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of any default, the non-defaulting Party shall provide notice of the default and the defaulting Party shall have a reasonable opportunity to cure the default within forty-five (45) days. In the event the defaulting Party fails to cure within forty-five (45) days or such reasonable period of time as may be appropriate, the Party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available. Further, the Parties may apply to the Court for relief, by way of a motion for enforcement of litigant's rights.

**10.16 Notice of Actions.** The Parties and their respective counsel agree immediately to provide each other with notice of any lawsuits, actions or governmental declarations threatened or pending by third parties of which they are actually aware which may affect the provisions of this Agreement.

**10.17 Governing Law, Construction, Resolution of Disputes.** This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Middlesex County.

**10.18 DJ Action.** The Parties acknowledge that this Agreement cannot be modified by the DJ Action or any amendments to the Township's Affordable Housing Plan or Land Use and

Development Ordinances and this Agreement shall control with respect to those matters as applied to the Development Property. Upon the entry of a Judgment of Compliance and Repose in the Township's DJ Action, and after the DJ Action is concluded, the Court shall retain jurisdiction to ensure compliance with the terms and conditions of this Agreement. As to any inconsistencies between the Required Approvals and this Agreement, the Required Approvals shall control. In the event of an appeal of the DJ Action, the terms and conditions of this Agreement shall control and shall not be effected by the outcome of any such appeal.

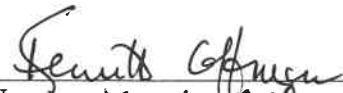
**10.19 Recitals.** The recitals of this Agreement are incorporated herein and made a part hereof.

**THE REMAINDER OF THIS PAGE IS PURPOSEFULLY BLANK**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:

PRINCETON ORCHARDS ASSOCIATES,  
LLC

  
Name: Kenneth Callahan  
Title: COO

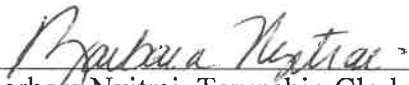
By:   
Name: Anthony J. Weissenberger, Jr.  
Title: Managing Member

Dated: 3/16/18

Witness/Attest:

TOWNSHIP OF SOUTH BRUNSWICK

By: Charlie Carley,  
as its DEPUTY MAYOR

  
Barbara Nyitrai, Township Clerk

By:   
Charlie Carley, Deputy Mayor

Dated: 2/28/2018

Witness/Attest:

TOWNSHIP OF SOUTH BRUNSWICK  
PLANNING BOARD

By:

  
Tammy Scimone, Secretary

By:   
Paul Prodomo, Chair

Dated: 3/9/18



STATE OF PA :

SS  
COUNTY OF Montgomery :

I CERTIFY that on March 16, 2018, Kenneth Goffman personally came before me and he/she acknowledged under oath, to my satisfaction, that:

(a) he/she is the COO of Princeton Orchards Associates, LLC, the Limited Liability Company named in this document;

(b) he/she is the attesting witness to the signing of this document by Graham Weissenburger Jr. who is the Managing Member;

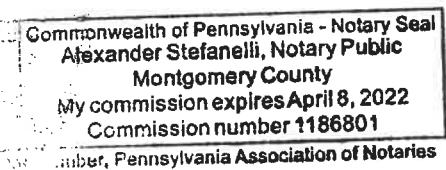
(c) this document was signed and delivered by the Company as its voluntary act duly authorized by a proper resolution;

(d) he/she knows the proper seal of the Company (if any), which was affixed to this document; and

(e) he/she signed this proof to attest to the truth of these facts.

Signed and sworn to before me  
On March 16, 2018

Alexander Stefanelli




Kenneth Goffman  
Kenneth Goffman  
COO


STATE OF NEW JERSEY:  
SS  
COUNTY OF MIDDLESEX:

I CERTIFY that on February 28, 2018, BARBARA NYITRAI, personally came before me and she acknowledged under oath, to my satisfaction, that:

- (a) she is the Township Clerk of the Township of South Brunswick, the municipal corporation named in this document;
- (b) she is the attesting witness to the signing of this document by Charlie Carley, who is the Deputy Mayor of the Township of South Brunswick;
- (c) this document was signed and delivered by the Township of South Brunswick as its voluntary act duly authorized by a proper resolution of the Township Council;
- (d) she knows the proper seal of the Township of South Brunswick which was affixed to this document; and
- (e) she signed this proof to attest to the truth of these facts.

Signed and sworn to before me  
On February 28, 2018

  
Donald J. Sears  
An Attorney At Law  
In the State of New Jersey


  
Barbara Nyitrai, Township Clerk

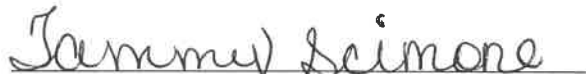
STATE OF NEW JERSEY:  
SS  
COUNTY OF MIDDLESEX:

I CERTIFY that on March 9, 2018, TAMMY SCIMONE, personally came before me and she acknowledged under oath, to my satisfaction, that:

- (a) she is the Secretary of the South Brunswick Planning Board, the municipal corporation named in this document;
- (b) she is the attesting witness to the signing of this document by Paul Prodromo, who is the Chairperson of the South Brunswick Planning Board;
- (c) this document was signed and delivered by the South Brunswick Planning Board as its voluntary act duly authorized by a proper resolution of the Board;
- (d) she knows the proper seal of the Board (if any) which was affixed to this document; and
- (e) she signed this proof to attest to the truth of these facts.

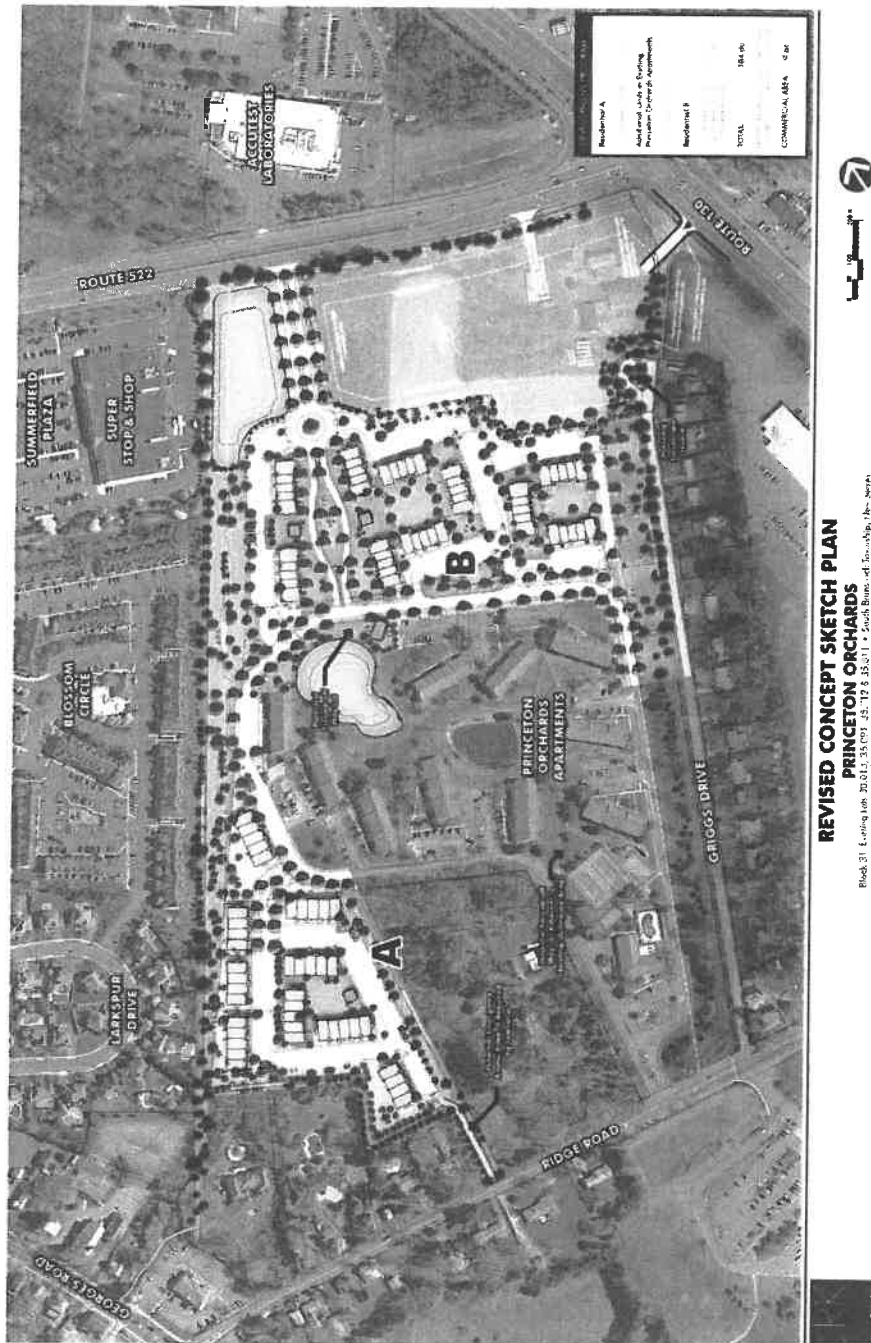
Signed and sworn to before me  
On March 9, 2018

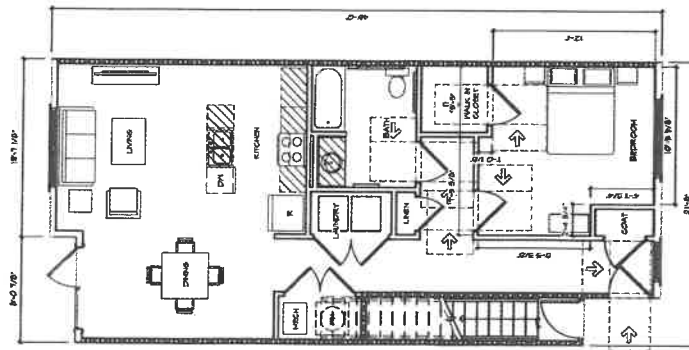
  
Donald J. Sears  
An Attorney at Law  
In the State of New Jersey

  
Tammy Scimone, Planning Board Secretary

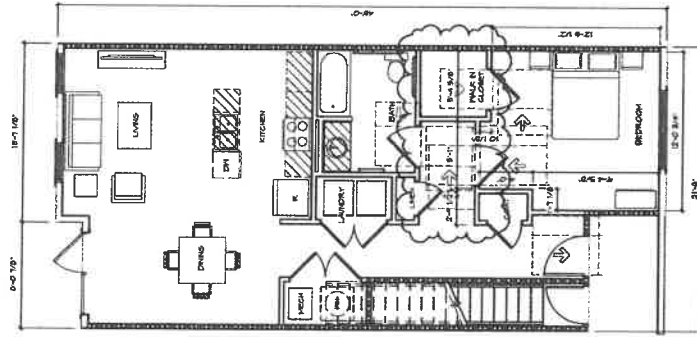
## EXHIBIT A

## CONCEPT PLAN FOR INCLUSIONARY DEVELOPMENT ARCHITECTURAL ELEVATIONS AND FLOOR PLANS

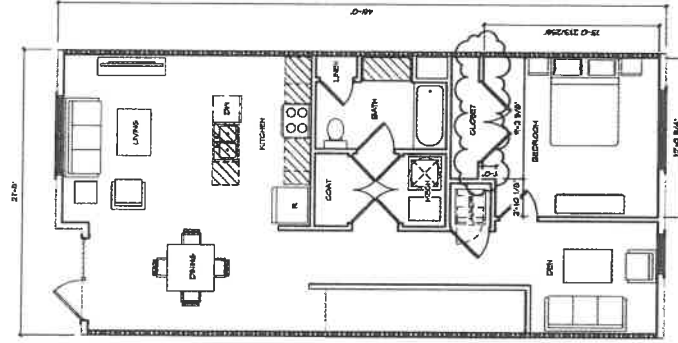




1 UNIT A1 PLAN  
SCALE: 1/4" = 1'-0"



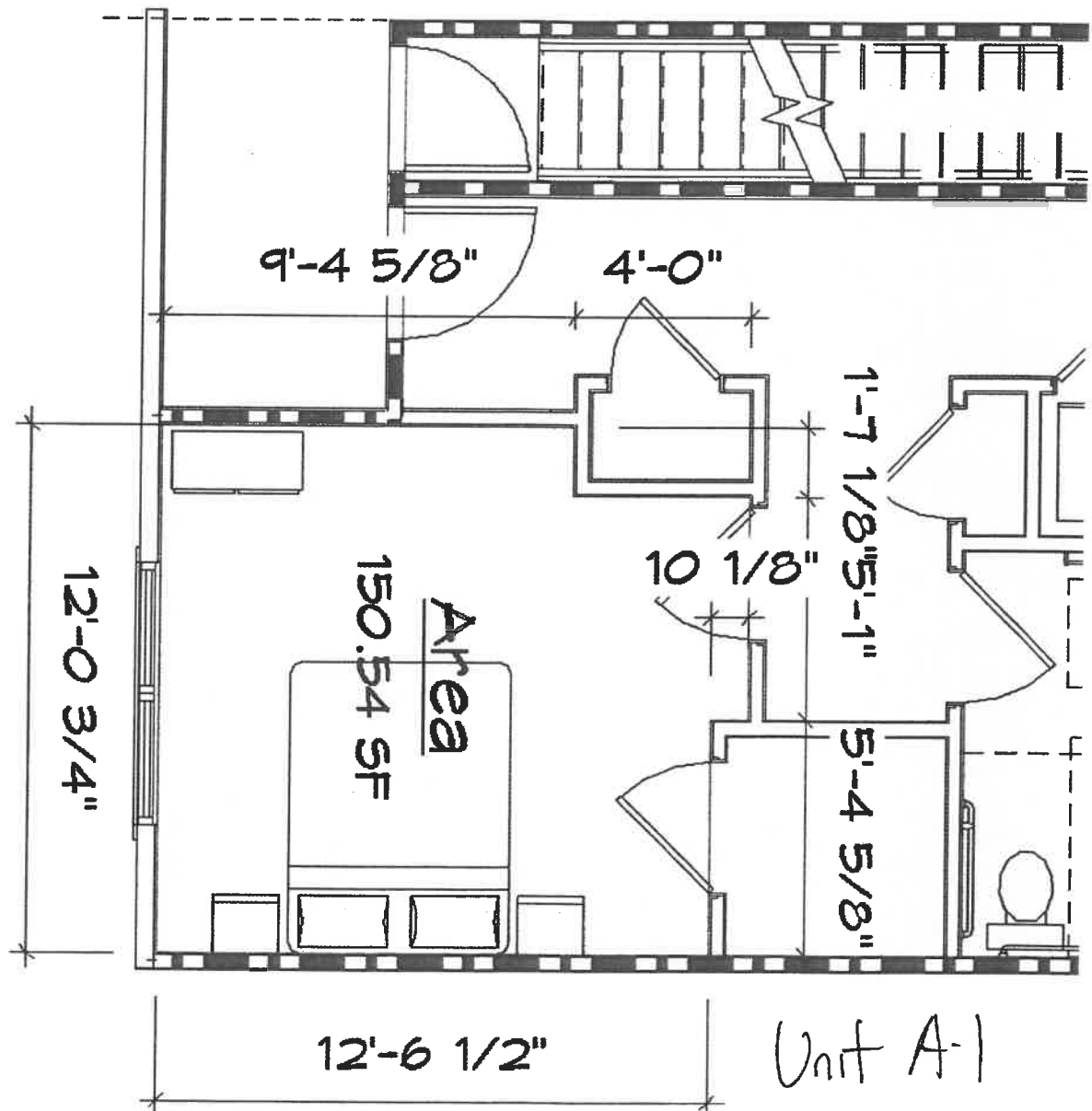
3 UNIT A1-ALT PLAN  
SCALE: 1/4" = 1'-0"



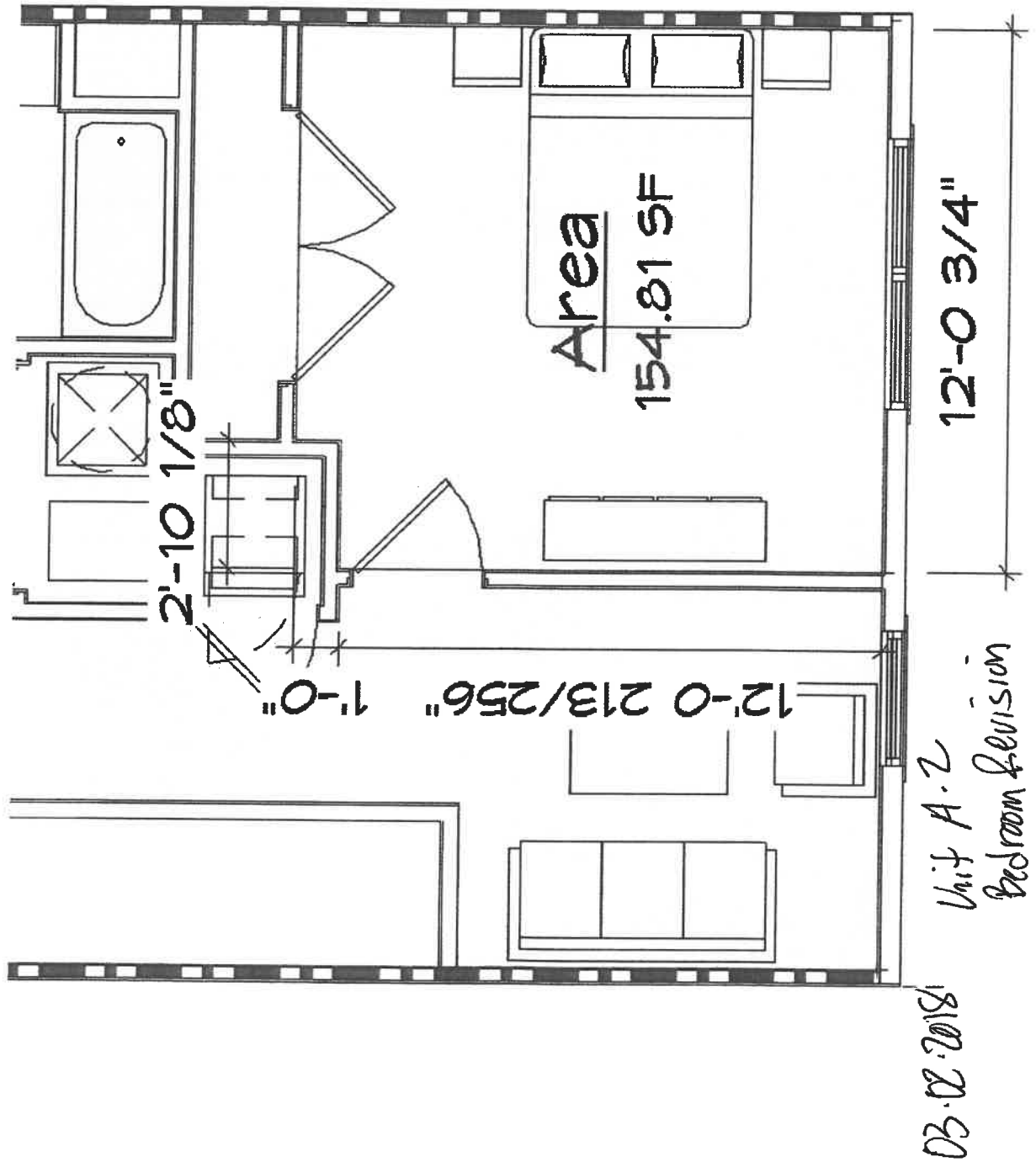
UNIT A2 PLAN  
SCALE: 1/4" = 1'-0"

## CONCEPT UNIT PLANS PRINCETON ORCHARDS

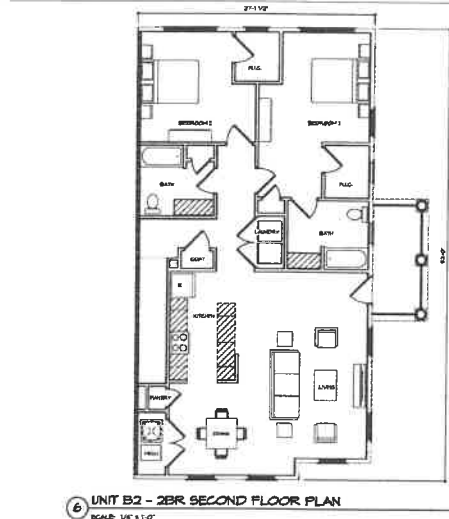
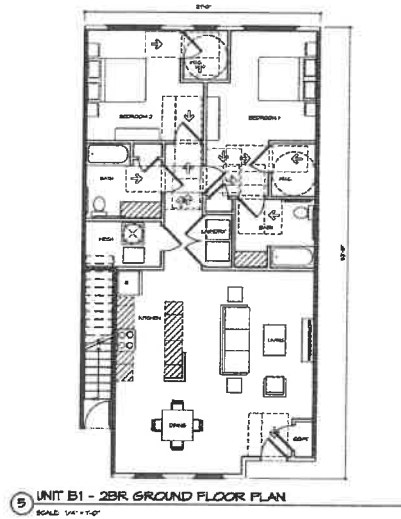
**PRINCETON ORCHARDS**  
Block 31 - Existing Lots 30,013, 35,091, 35,712 & 35,811 - South Brunswick Township, New Jersey  
February 2, 2018; Last Revised March 2, 2018 • Project Number: 03.13018.00



Unit A-1  
Bedroom  
Revision  
03.02.2018



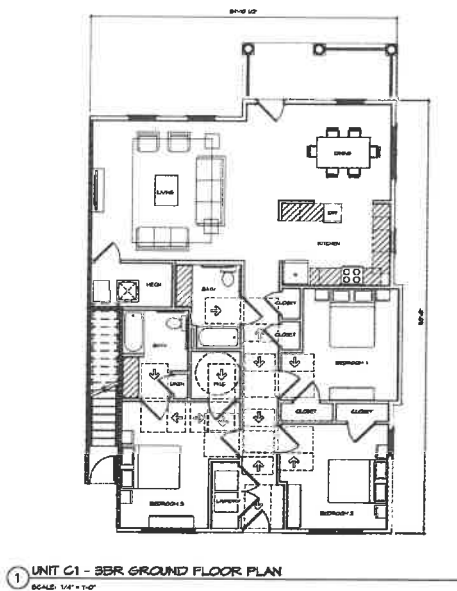
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Project: [illegible]  
Scale: 1/4" = 1'-0"



### CONCEPT UNIT PLANS PRINCETON ORCHARDS

Block 31 - Existing Lots 30.013, 35.091, 35.712 & 35.811 • South Brunswick Township, New Jersey  
February 2, 2018; Last Revised March 2, 2018 • Project Number: 03.13C18.00

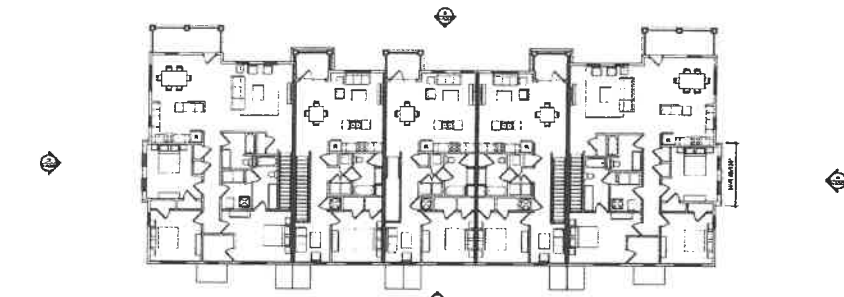
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Project: [illegible]  
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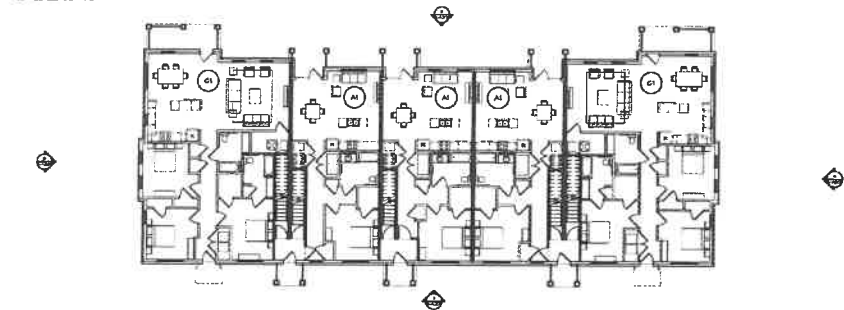
### CONCEPT UNIT PLANS PRINCETON ORCHARDS

Block 31 - Existing Lots 30.013, 35.091, 35.712 & 35.811 • South Brunswick Township, New Jersey  
February 2, 2018; Last Revised March 2, 2018 • Project Number: 03.13C18.00





2 BLDG - A SECOND FLOOR  
SCALE: 3/8" = 1'-0"



1 BLDG - A GROUND FLOOR  
SCALE: 1/8" = 1'-0"

**CONCEPT FLOOR PLANS & ELEVATIONS**  
**PRINCETON ORCHARDS**

Block 31: Existing Lots 30,013, 35,091, 35,712 & 35,811 • South Brunswick Township, New Jersey  
February 2, 2018 • Project Number: 03.13018.00



3 BLDG - A REAR ELEVATION  
SCALE 1/8" = 1'-0"



2 BLDG - A LEFT ELEVATION  
SCALE: 1/8" = 1'-0"



4 BLDG - A RIGHT ELEVATION  
SCALE: 1/8" = 1'-0"



1 BLDG - A FRONT ELEVATION  
SCALE: 1/8" = 1'-0"

## CONCEPT FLOOR PLANS & ELEVATIONS PRINCETON ORCHARDS

Block 31- Existing Lots 30,013, 35,091, 35,712 & 35,611 • South Brunswick Township, New Jersey  
February 2, 2018 • Project Number: 03.13018.00



## PRINCETON ORCHARDS

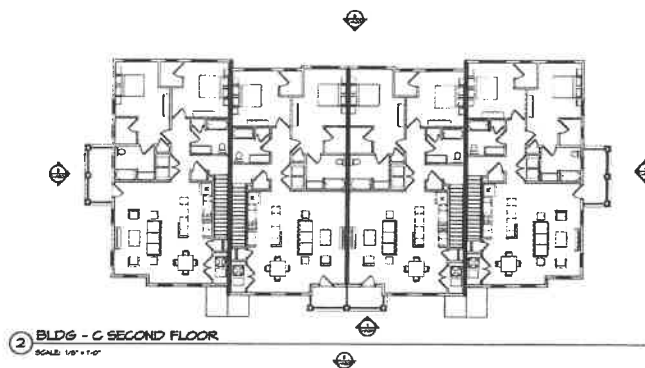
Block 31- Existing Lots 30.013, 35.091, 35.712 & 35.811 - South Brunswick Township, New Jersey  
February 2, 2018 - Project Number: 0313018.00



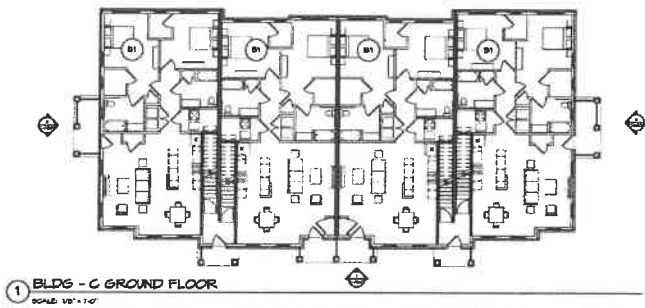
## PRINCETON ORCHARDS

Block 31 - Existing Lots 30.013, 35.091, 35.712 & 35.811 - South Brunswick Township, New Jersey  
February 2, 2018 • Project Number: 03.13018.00

Architect: [illegible] Date: [illegible] Project: [illegible] Scale: 1/8" = 1'-0"



2 BLDG - C SECOND FLOOR  
SCALE: 1/8" = 1'-0"



1 BLDG - C GROUND FLOOR  
SCALE: 1/8" = 1'-0"

### CONCEPT FLOOR PLANS & ELEVATIONS

#### PRINCETON ORCHARDS

Block 31 - Existing Lots 30.01, 3, 35.00, 35.712 & 35.811 - South Brunswick Township, New Jersey  
February 2, 2018 • Project Number: 03.13018.00

Architect: [illegible] Date: [illegible] Project: [illegible] Scale: 1/8" = 1'-0"



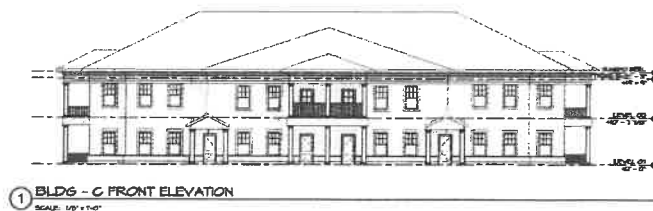
3 BLDG - C REAR ELEVATION  
SCALE: 1/8" = 1'-0"



2 BLDG - C LEFT ELEVATION  
SCALE: 1/8" = 1'-0"



4 BLDG - C RIGHT ELEVATION  
SCALE: 1/8" = 1'-0"



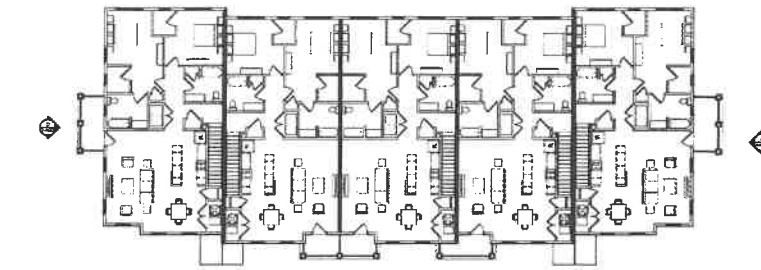
1 BLDG - C FRONT ELEVATION  
SCALE: 1/8" = 1'-0"

### CONCEPT FLOOR PLANS & ELEVATIONS

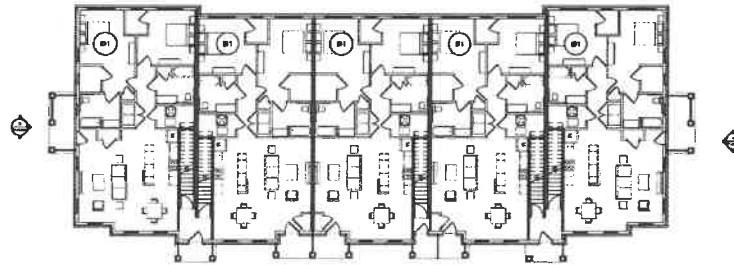
#### PRINCETON ORCHARDS

Block 31 - Existing Lots 30.013, 35.091, 35.712 & 35.811 - South Brunswick Township, New Jersey  
February 2, 2018 • Project Number: 03.13018.00

Architect: [illegible] Date: 02/18/18  
Project: Princeton Orchards  
Location: South Brunswick Township, New Jersey  
Scale: 1/8" = 1'-0"



2 BLDG - D SECOND FLOOR  
SCALE: 1/8" = 1'-0"

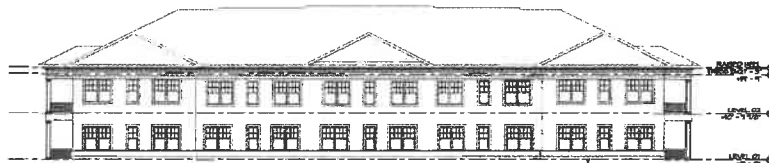


1 BLDG - D GROUND FLOOR  
SCALE: 1/8" = 1'-0"

### CONCEPT FLOOR PLANS & ELEVATIONS PRINCETON ORCHARDS

Block 31 - Existing Lots 30.013, 35.091, 35.712 & 35.811 • South Brunswick Township, New Jersey  
February 2, 2018 • Project Number 03.13018.00

Architect: [illegible] Date: 02/18/18  
Project: Princeton Orchards  
Location: South Brunswick Township, New Jersey  
Scale: 1/8" = 1'-0"



3 BLDG - D REAR ELEVATION  
SCALE: 1/8" = 1'-0"



2 BLDG - D LEFT ELEVATION  
SCALE: 1/8" = 1'-0"



4 BLDG - D RIGHT ELEVATION  
SCALE: 1/8" = 1'-0"



1 BLDG - D FRONT ELEVATION  
SCALE: 1/8" = 1'-0"

### CONCEPT FLOOR PLANS & ELEVATIONS PRINCETON ORCHARDS

Block 31 - Existing Lots 30.013, 35.091, 35.712 & 35.811 • South Brunswick Township, New Jersey  
February 2, 2018 • Project Number 03.13018.00

## **EXHIBIT B**

### **Subdivision XV(B) PRD VI (Mixed Development Zone)**

#### **Section 62-867 – Purpose**

The PRD VI Zone includes Block 31, Lots 30.012, 35.09, 35.712 and 35.811 (hereafter, “the Tract”) containing approximately 55 acres. The purposes of the PRD Zone are to permit up to nine (9) acres of commercial development adjacent to the intersection of Routes 522 and 130 (excluding any future right-of-way dedications or vacations)(the “Commercial Tract”); render the 120 existing multi-family units within the existing Princeton Orchards Apartments a conforming use and permit the construction of 184 additional housing units on the remaining undeveloped acres (the “Residential Tract”). The PRD VI Zone shall permit within the Residential Tract up to 304 total units, consisting of 120 existing apartments and 184 new apartments, of which an amount equal to 25% of the new apartments (46 units) shall be set-aside for and affordable to very low, low and moderate income households.

#### **Section 62-868 – Uses Permitted**

The following uses are permitted in the PRD VI district:

- (1) Multifamily residential units, but only within the Residential Tract.
- (2) Within the Commercial Tract:
  - a. Communitywide and area-wide retail establishments, including department and variety stores, supermarkets, clothing stores, furniture and appliance stores, drugstores and liquor stores, but excluding warehouse/discount clubs.
  - b. Communitywide and area-wide service activities, excluding movie theaters, but including banks, restaurants, fast food restaurants, exercise and dance schools, taverns, travel agencies, indoor recreation facilities and fitness centers and other such ancillary supermarket services.
  - c. Offices for physicians, dentists, engineers, lawyers, architects, public accountants, real estate and insurance brokers, city planners and similar professions.
  - d. Medical HMO facilities and medical laboratories.
  - e. Educational facilities for learning and training.
  - f. Health Clubs.
  - g. Dance studios.
  - h. Medical service and retail medical supply.
  - i. Duplicating or office supply service.
  - j. Product demonstration, display or showroom facilities.
  - k. Conference or training centers.
  - l. Family recreation facilities.
  - m. Nursing homes.
  - n. Child care centers.
  - o. Assisted living facilities, with an affordable housing component.
  - p. Laboratory or research facilities.
  - q. Existing Contractor business and related storage.

### **Section 62-869 – Uses permitted as conditional uses.**

Uses permitted as conditional uses in the PRD VI district shall be subject to planning board approval under N.J.S.A. 40:55D-67. Provisions and performance standards for conditional uses shall apply, as specified in this chapter. The following uses shall be permitted as conditional uses:

- (1) Community buildings or activities of a quasipublic, social or fraternal character.

### **Section 62-870 – Accessory uses permitted.**

Accessory uses permitted in the PRD VI district:

- (1) Private garages.
- (2) Community swimming pools, tennis courts, basketball courts, tot lots, volley ball courts and other recreational facilities.
- (3) Gazebos, trellises, arbors, pergolas, decks, patios, gardens and landscaped areas including fountains, ponds and other water features.
- (4) A clubhouse, including, but not limited to: a fitness center; multi-purpose rooms, wellness center; leasing office; entertainment center; meeting rooms; resident food and beverage area; and business center.
- (5) Maintenance and storage buildings.
- (6) Signs, as regulated in this chapter.
- (7) Fences and walls, as regulated in this chapter.

### **Section 62-871 – Tract and open space requirements.**

- (1) It is recognized that the Tract may be subdivided. The Tract bulk standards associated within the PRD VI Zone shall apply to the overall Tract. In the event there are subdivided lots within the Tract, there may be easements for vehicular and pedestrian circulation, shared parking and storm water management facilities for use on a Tract wide basis, so as to permit the development of the PRD Zone as a comprehensive mixed use project.
- (2) The maximum building coverage shall be 25 percent of the total land area of the Tract.
- (3) The minimum open space standard shall be 30 percent of the Tract.
- (4) **Residential Tract buffers.** Residential Tract buffers shall be provided along the residential portion of the Tract (the portion south of the proposed commercial subdivision line), which residential buffers shall include a landscaped berm of 20' in width within the buffer as follows:
  - a. 65 feet along the western property line.
  - b. 100 feet along the eastern property line, adjacent to the existing right of way of Griggs Drive.
  - c. 50 feet along the southern property line, including adjacent to Ridge Road and along the westerly property line of Lot 35.812.
- (5) **Commercial Tract buffers.** Commercial Tract buffers shall be as follows:

- a. 40 feet along the northerly property line, adjacent to Route 522 and Route 130 frontage.
  - b. 10 feet along the remaining property lines.
- (6) **Griggs Drive cul-de-sac bulb buffer.** There shall be a 50 foot buffer adjacent to the cul-de-sac bulb of Griggs Drive. The buffer shall begin at the subdivision line separating the Residential Tract from the Commercial Tract. There shall be a landscaped berm of 20' in width within the 50 foot buffer. The purpose of the landscaped berm is to provide additional screening of existing and proposed non-residential improvements for the properties adjacent to this portion of the PRD VI zone.
- (7) The following encroachments into the Tract buffers are permitted:
  - a. Pedestrian trails, sidewalks, signs, retaining walls, and landscaped areas are permitted in all buffer areas.
  - b. Stormwater facilities shall not be located within 20 feet of the Tract boundary line.
  - c. Driveways are permitted within the Tract buffer adjacent to Route 522.
  - d. An access drive is permitted to connect Griggs Drive to the existing Contractor Business. However, in the event the existing Contractor Business ceases operation, the Contractor Business driveway onto Griggs Drive shall be closed, and no interconnection between the Tract and Griggs Drive shall be allowed.
  - e. Emergency access if required by Township
- (8) Existing roads, existing parking areas and related improvements are exempt from all Tract buffer requirements.

#### **Section 62- 872 – Area, Yard, and Density Tract Requirements**

- (1) The maximum residential yield shall be 304 units.
- (2) The maximum impervious coverage shall be 70%.
- (3) Multiple principal buildings and multiple principal uses shall be allowed on a single lot.
- (4) No building shall exceed three (3) stories and 40 feet in height, except as regulated by the height exception provision of Section 62-2341 of this chapter.
- (5) **Residential Building Setbacks.** Residential buildings shall be setback at least:
  - a. 400 feet from the northerly property line, adjacent to Route 522.
  - b. 65 feet from the westerly property line, adjacent to Summerfield.
  - c. 50 feet from the southerly property line, adjacent to Ridge Road.
  - d. 100 feet from the easterly property line, adjacent to Griggs Drive.
  - e. 10 feet from any street or driveway.
  - f. 6 feet from any parking area.
- (6) **Commercial Building Setbacks.** Commercial buildings shall be setback at least:
  - a. 100 feet from Route 522 and Route 130.
  - b. 40 feet from all other property lines.
  - c. 10 feet from any street or driveway (other than Route 522 and Route 130).
  - d. 5 feet from any parking area.

- (7) Minimum distances between buildings. The following minimum distances between buildings is required:
  - a. 50 feet between residential and nonresidential buildings within the Tract, irrespective of a subdivision of the tract.
  - b. 30 feet between residential buildings, exclusive of covered and uncovered stairs and stoops, stairways, balconies, decks, cornices, eaves, gutters, bay windows, chimneys and other projections from buildings.
- (8) Non-residential uses shall be subject to the following bulk standards:
  - a. Minimum lot area: 40,000 square feet.
  - b. Minimum lot frontage: 200 feet.
  - c. Front Yard setback : 100 feet from Route 522 and Route 130
  - d. Minimum rear setback: 40 feet
  - e. Maximum Building Coverage: 25%
  - f. Maximum lot coverage: 70 %
- (9) All residential development must be served by public water and sanitary sewer service.

**Section 62-873 – Off-street parking requirements and loading requirements.**

- (1) Off-street parking in the PRD VI district shall be provided as follows: All off-street parking shall be designed to comply with the standards set forth in the New Jersey Residential Site Improvements Standard (RSIS). The parking requirement for the clubhouse shall be 2.5 spaces per 1,000 square feet of gross floor area.
- (2) The parking requirement for non-residential development shall be four (4) parking spaces per 1,000 square feet. Shared parking arrangements are encouraged.
- (3) Parking and parking setbacks are as follows:
  - a. No parking is allowed within any Tract buffer. Parking and drive aisles shall be permitted in all building setback areas.
  - b. All nonresidential parking shall be setback a minimum of 40 feet from Routes 130 and 522, and 10 feet from all other Tract boundaries.
- (4) All nonresidential buildings shall face the public roadways or entrance boulevard. Any service or loading areas facing public roadways shall be sufficiently screened from view from the public road.
- (5) Parking Stall and Aisle dimensions:
  - a. Parking stall dimensions shall be nine (9') feet wide and eighteen (18') feet deep.
  - b. Parking aisle width shall be twenty four (24') feet.

**Section 62-874 – Lighting.**

Lighting shall be provided in accordance with Section 62-208, with the exception that Section 62-208(g)(4) regarding lighting of sidewalks and pedestrian walkways may be accomplished by ambient lighting from buildings and parking areas and such lighting as may be required to ensure pedestrian safety. No lighting is required for pedestrian trails located within buffer areas, except



for such lighting as may be required to ensure pedestrian safety.

#### **Section 62-875 – Trash and Recycling Enclosures.**

- (1) There shall be one enclosure (18' X 24') for every three (3) residential buildings for trash and recycling.
- (2) Trash and recycling enclosures shall be completely surrounded by a six-foot-high solid architectural fence and solid gate. All outside trash shall be stored in this area and shall not be in public view over the fence height. All similar accessory appurtenances, such as propane tanks, must be similarly enclosed.

#### **Section 62-876 - Recreational facilities.**

Section 62-206(5)e shall not apply to the PRD VI Zone. Instead, 80 square feet of recreational facilities per housing unit shall be provided. Recreational facilities in the PRD VI Zone may include a clubhouse, pool and pool area, outdoor courts, and fenced off play areas designated for children of different ages. The existing clubhouse, pool, pool area and outdoor courts shall be available to all residents of Princeton Orchards and shall be credited toward satisfaction of the recreational facility requirement.

#### **Section 62-877 – Affordable Housing**

- (1) Forty-six (46) affordable housing units shall be provided which equates to 25% of the 184 new residential units.
- (2) Pursuant to the Uniform Housing Affordability Controls ("UHAC"), the affordable units shall be restricted to eligible very-low, low and moderate income households for a minimum of thirty (30) years from the date of their initial occupancy ("Deed- Restriction Period").
- (3) Ten (10) units, or 21.7% of the affordable units, shall be affordable to very-low income households, defined as those households earning 30 percent or less of the regional median income; fourteen (14) units, or 30.4% of the affordable units, shall be affordable to low-income households, defined as those households earning between 30 percent and 50 percent of the regional median income; and twenty two (22) units, or 47.8% of the affordable units, shall be affordable to moderate-income households, defined as those households earning between 50 percent and 80 percent of the regional median income.
- (4) The affordable units shall comply with the following bedroom distribution requirements: ten (10) three bedroom units (2 very-low, 3 low and 5 moderate), twenty seven (27) two bedroom units (6 very-low, 8 low and 13 moderate) and nine (9) one bedroom units (2 very-low, 3 low and 4 moderate).
- (5) The affordable units shall comply with the UHAC regulations with regards to the pricing of rents associated with very low, low and moderate income units pursuant to N.J.A.C. 5:80-26.3(d) (with one exception that very-low income units shall be provided (as noted in 62-877(3) above) for households at 30% or less of median income and pursuant to N.J.A.C. 5:80-26.12.
- (6) The affordable units shall comply with the phasing of market housing and affordable housing pursuant to N.J.A.C. 5:93-5.6(d), and in accordance with the following schedule:

<u>Minimum Percentage of Low and Moderate Income Units Completed</u>	<u>Percentage of Market Rate Housing Units Completed</u>
0	25
10	25 + 1 unit
50	50
75	75
100	<u>90</u>
	100

- (7) The affordable units shall comply with the UHAC bedroom distribution requirements, N.J.A.C. 5:80-26.3(b), as follows:
  - a. The combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low- and moderate-income units;
  - b. At least 30 percent of all low- and moderate-income units are two bedroom units;
  - c. At least 20 percent of all low- and moderate-income units are three bedroom units; and
  - d. The remainder, if any, may be allocated at the discretion of the developer as two or three bedroom units.
- (8) The two (2) bedroom affordable units shall be reasonably dispersed within the existing Princeton Orchards buildings. The one (1) and three (3) bedroom affordable units shall be reasonably dispersed within the new housing. The two (2) bedroom units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector, and brought up to code as necessary.
- (9) Each affordable unit shall contain at least one bedroom with an area of at least 150 square feet and no bedroom shall have an area of less than 100 square feet. The minimum area of each affordable unit shall be as follows:
  - a. One (1) bedroom – 650 square feet.
  - b. Two (2) bedroom – 875 square feet.
  - c. Three (3) bedroom – 1,150 square feet.
- (10) The affordable units shall utilize the same heating sources as the market units within the inclusionary development.
- (11) With regard to ADA compliance, all low and moderate income housing provided as townhouses or multistory dwelling units shall comply with N.J.A.C. 5:97-3.14.
- (12) The cost of amenities shall be included within the maximum housing fees permitted by the UHAC regulations.
- (13) The developer shall contract with an experienced administrative agent as per the UHAC regulations (N.J.A.C. 5:80-26.14).
- (14) The affordable units shall comply with the UHAC regulations with regards to affirmative marketing per N.J.A.C. 5:80-26.15.

## **Section 62-878 – Conflicts in Standards**

RSIS standards and the PRD VI standards shall supersede any conflicting standards within this chapter.

**EXHIBIT C**

**FORM OF STIPULATION OF DISMISSAL**

VOGEL, CHAIT, COLLINS AND SCHNEIDER  
25 Lindsley Drive, Suite 200  
Morristown, NJ 07960  
973-538-3800  
Special Counsel to Defendant Planning Board of the  
Township of South Brunswick  
Thomas J. Molica, Jr., Esq. (Attorney ID NO. 019442000)

IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF SOUTH BRUNSWICK, COUNTY OF MIDDLESEX	SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004433-17
SOUTH BRUNSWICK CENTER, LLC, Plaintiff, v. TOWNSHIP OF SOUTH BRUNSWICK, and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.	SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004432-17
AVALON BAY COMMUNITIES, INC., Plaintiff, v. TOWNSHIP OF SOUTH BRUNSWICK, and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.	SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004435-17
RICHARDSON FRESH PONDS, LLC & PRINCETON ORCHARDS ASSOCIATES, LLC Plaintiff, v. TOWNSHIP OF SOUTH BRUNSWICK, Defendant.	SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004436-17
WINDSOR ASSOCIATES, Plaintiff, v. TOWNSHIP OF SOUTH BRUNSWICK, and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.	SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004434-17

<p>STANTON GIRARD, LLC, Plaintiff,</p> <p>v. TOWNSHIP OF SOUTH BRUNSWICK, and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004433-17</p>
<p>AMERICAN PROPERTIES AT SOUTH BRUNSWICK, LLC, Plaintiff,</p> <p>v. TOWNSHIP OF SOUTH BRUNSWICK, TOWNSHIP COUNCIL OF THE TOWNSHIP OF SOUTH BRUNSWICK, and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004437-17</p>
<p>PPF INDUSTRIAL – ROUTE 130/EXIT 8A, L.L.C., a limited liability company organized under the laws of the State of Delaware, Plaintiff,</p> <p>v. TOWNSHIP OF SOUTH BRUNSWICK, TOWNSHIP COUNCIL OF THE TOWNSHIP OF SOUTH BRUNSWICK, and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004094-17</p>
<p>K HOVNANIAN SHORE ACQUISITIONS, LLC, Plaintiff,</p> <p>v. TOWNSHIP OF SOUTH BRUNSWICK AND PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-001194-17</p> <p style="text-align: center;"><b><u>STIPULATION AND ORDER OF DISMISSAL</u></b></p>

Pursuant to applicable Rules Governing the Courts of the State of New Jersey, Plaintiffs Richardson Fresh Ponds, LLC and Princeton Orchards Associates, LLC ("Plaintiffs") and Defendants Township of South Brunswick, Township Council of the Township of South Brunswick, and Planning Board of the Township of South Brunswick ("Defendants"), by and through their respective undersigned counsel, do hereby **STIPULATE** and **AGREE** the action docketed in the Superior Court of New Jersey, Law Division, Middlesex County as MID-L-004436-17 and part of the above-captioned consolidated actions be and is hereby dismissed with prejudice, with each party to bear its own costs.

VOGEL, CHAIT, COLLINS AND SCHNEIDER  
Attorneys for South Brunswick Township  
Planning Board

By: \_\_\_\_\_  
THOMAS J. MOLICA, JR.

Dated: \_\_\_\_\_

TOWNSHIP OF SOUTH BRUNSWICK  
Attorney for the Township of South Brunswick and  
the Township Council of the Township of South  
Brunswick

By: \_\_\_\_\_  
DONALD J. SEARS

Dated: \_\_\_\_\_

FOX ROTHSCHILD, LLP  
Attorneys for Richardson Fresh Ponds LLC and  
Princeton Orchards Associates

By: \_\_\_\_\_  
HENRY KENT-SMITH

Dated: \_\_\_\_\_

## EXHIBIT D

### PRINCETON ORCHARDS TREE REPLACEMENT WORKSHEET

#### Princeton Orchards and Stover Site

Obligation	1,571
Planting	<u>1,295</u>
Deficit	276

#### Deficit In-Lieu Calculation

First 50 trees @ \$181 each	\$ 9,050.00
Second 50 trees @ \$163 each	\$ 8,150.00
Next 100 @ \$145 each	\$14,500.00
Last 76 @ \$128 each	<u>\$ 9,728.00</u>
	\$41,428.00